

## EARLY ACTION COMPACT CONCERNS

Southern Alliance for Clean Energy

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Environmental and health advocacy groups want clean air now. We hope that the Early Action Compacts in Tennessee and across the region are successful and we applaud the opportunity this has provided to involve and educate stakeholders in the process. However, we have serious concerns about the legality, the implementation, the follow-through, enforcement, and ultimate success of these programs. There is no reason the state had to relinquish the normal nonattainment schedule in order to get cleaner air sooner. Early action could happen without losing the proven and time-tested enforcement tools of the Clean Air Act. One of our biggest concerns in addition to the illegality of the EACs is that the EACs were intended for marginal nonattainment areas because it is so unlikely that larger areas excessively violating the 8-hour standard would be able to comply by 2007.

### PROBLEMS

- Participating areas will not be required to implement proven control measures such as transportation conformity, nonattainment new source review, and offsets.
- It is doubtful that areas would adopt such measures voluntarily due to the political and economic costs required to implement them. (Getting elected officials to vote for Inspection and Maintenance programs will be extremely difficult. We've seen this political hurdle in the past and without the threat of EPA, it may be politically impossible to ensure the necessary pollution reduction measures are agreed to.)
- Without these proven measures, it is unlikely that many areas will be able to meet the 2007 attainment deadline, which ultimately would create further delay of ozone reductions (see last bullet).
- Even if an area opts to use a proven control strategy, the real problem comes 5 years down the road when the measure isn't working up to expectations and there is no mechanism for enforcement.
- Some areas receiving EPA approval for early action exceed the 8-hour standard by a margin so large that they cannot realistically meet the requirement to clean up voluntarily by 2007 ("excessive criteria" established by the American Lung Association. For such areas, early action appears to be little more than a technique for delaying the effective date for non-attainment designation and the implementation of CAA requirements. The state of NC opted to keep their largest and most serious nonattainment areas out of the EACs because they knew they wouldn't be able to meet the 2007 deadline. Holmstead himself is apparently "stunned" by the number of areas trying to do the EACs. Tennessee has at least 4 areas (Knoxville, Memphis, Chattanooga, and Nashville) that meet this "excessive criteria" designed by the ALA.
- An area failing to comply with EAC requirements will get kicked back to the normal nonattainment schedule – in theory. In reality, a new demonstration SIP wouldn't be required until Dec. 31, 2008 – a year and 7 months after the normal nonattainment SIP is due in April of 2007.

### EXTRA LEGAL

- DEFERRALS: EPA lacks authority under the CAA to defer the effectiveness of a nonattainment designation. A nonattainment designation triggers a schedule under which SIPs are due, control measures must be implemented, and air quality standards must be attained. Deferring the effectiveness of a nonattainment designation would wreak havoc on that schedule and render it virtually meaningless.

- **MAINTENANCE PLANS:** The CAA requires redesignated areas to adopt two consecutive 10-year maintenance plans. EACs have no such provision.
- **REDESIGNATION:** EPA will not be able to legally redesignate a participating area as attainment because the agency will not be able to certify that the area has complied with applicable federal pollution controls for nonattainment areas. Nor will the agency be able to demonstrate that the area has adopted a maintenance plan that meets the requirements of the Act.
- **BUT,** we want these EACs to work too, so legally challenging the rules won't happen until environmental and health groups see serious failures to meet the EAC deadlines and ensure success.

#### **LACK OF EPA OVERSIGHT**

- National EPA has clearly indicated to national groups that they are taking a backseat and are exerting very little control over the EAC process to ensure success. They are delegating tracking and maintenance to voluntary efforts of environmental/health groups and states. We are worried that without proper oversight, exaggerations of modeling estimates and other projections will be accepted and will doom the success of the EACs.
- EPA is unlikely to hold the deadlines firm – they don't want to be the bad guys. In addition, states might not enforce the triggering provision if an area fails to comply with an early deadline, further complicating the problems.
- Questions already are arising about the acceptance of certain counties and areas into the EACs and there is no precedent or agreed means of dealing with these issues. EPA is skeptical that these can succeed.

Areas have until Dec. 31, 2004 to withdraw from the EAC program and continue on the normal nonattainment path. We strongly encourage the stakeholder local groups to be **realistic** in their modeling and planning for emission reductions scenarios. If it looks like it would be too hard to meet the 2007 deadline, then withdraw instead of creating a bureaucratic and potentially legal nightmare for everyone involved.

We wish this process all the success possible, but we remain skeptical and very concerned.